HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL No.816 OF 2007

Date: 20-12-2007.

Between :

M/s.Fresenius Kabi India Pvt. Ltd., Pune,
Rep. by its Zonal Sales Manager.

.....Appellant.

And

M/s.Andhra Pradesh Health & Medical Housing & Infrastructure Development Corporation, Hyderabad, rep. by its Managing Director & another.

.....Respondents.

HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI
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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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JUDGMENT : (Per Hon'ble Sri Justice Bilal Nazki, ACJ)

The writ petitioner had challenged the placing of order of 2nd respondent with respect to supply of Tetrastarch. It appears that a tender was issued by the official respondents for purchase of medicines to be used in Government hospitals in Andhra Pradesh for the year ending 31st December 2007. One of the items for which tender was issued, was at Entry No.207 notifying "Tetrastarch". The case of the petitioner was that the 2nd respondent did not even tender for Tetrastarch. He tendered for Pentastarch. According to the learned Senior Counsel appearing for the writ petitioner, Tetrastarch and Pentastarch cannot be equated as the molecular weight in terms of Daltons varies. Whereas the molecular weight of Tetrastarch was 1,30,000/- Daltons, it was two lakh tonns

with respect to Pentastarch. The respondents' case was that Pentastarch and Tetrastarch are chemically same and fall in the group of Hydroxy Ethyl Starch. An expert's opinion was also taken and according to learned Senior Counsel, may be these two products belong to the same group of medicine, but Tetrastarch is more effective in its usage than the Pentastarch and once the official respondents had tendered for Tetrastarch, they were not within their rights to have selected a product which they consider an equivalent product.

The discussion on these questions would be academic at this point of time because the tender awarded to respondent No.2 is otherwise coming to an end by 31st of December 2007 and a new tender notice has already been issued. But in order to avoid confusion in future, we would like to direct the official respondents that before issuing tender notice, the technical opinion about the medicines and their equivalents should be taken and once a medicine is tendered for, they should comply strictly with the tender notice, because there won't be a confusion whether a particular medicine is equivalent or not and opinion taken before-hand would be the best option to exercise. It is also stated that for the next year already tender notice has been issued and the official respondents have not tendered for any of the specified Starches, but they have tendered for Hydroxy Ethyl

Starch.

Accordingly, the appeal is disposed of.

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BILAL NAZKI, ACJ

20th December 2007.

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RAMESH RANGANATHAN, J

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